

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

PUBLIC STORAGE, a Maryland REIT  
qualified to do business in California,

Plaintiff,

v.

DOROTHY SOBAYO; NATHANIEL  
SOBAYO; KINGSWAY CAPITAL-  
NATHANIEL BASOLA SOBAYO,

Defendants.

Case No: C 12-05263 SBA

**ORDER GRANTING  
MOTION TO REMAND**

Docket 7

On August 27, 2012, Plaintiff Public Storage ("Plaintiff") commenced a small claims court action against Defendants Dorothy Sobayo and Nathaniel Sobayo, and a small claims court action against Defendant Kingsway Capital - Nathaniel Basola Sobayo in the Superior Court of California, County of San Mateo. See Notice of Removal, Exhs. 1-A & 1-B, Dkt. 1.<sup>1</sup> In these actions, Plaintiff seeks to recover unpaid rent. See id. On October 11, 2012, Defendant Nathaniel Sobayo, acting pro se, filed a notice of removal based on federal question jurisdiction and diversity jurisdiction. See id. The parties are presently before the Court on Plaintiff's motion to remand. Dkt. 7. Defendants Dorothy Sobayo and Nathaniel Sobayo (collectively, "Defendants") oppose the motion. Dkt. 12. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS Plaintiff's motion to remand, for the reasons stated below. The

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<sup>1</sup> Plaintiff initiated the small claims court actions by filing documents entitled "Plaintiff's Claim and ORDER to Go to Small Claims Court." Notice of Removal, Exhs. 1-A & 1-B The Court will refer to these documents as complaints.

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1 Court, in its discretion, finds this matter suitable for resolution without oral argument. See  
2 Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

3 **I. DISCUSSION**

4 **A. Federal Question Jurisdiction**

5 Under 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the  
6 district courts of the United States have original jurisdiction, may be removed by the  
7 defendant or the defendants, to the district court of the United States. . . ." 28 U.S.C. §  
8 1441(a). Under 28 U.S.C. § 1331, district courts "have original jurisdiction of all civil  
9 actions arising under the Constitution, laws, or treaties of the United States." Federal  
10 question jurisdiction is presumed to be absent unless the removing party which seeks to  
11 invoke the Court's jurisdiction shows that plaintiff has alleged: (1) a federal cause of  
12 action, Am. Well Works Co. v. Layne & Bowler Co., 241 U.S. 257, 260 (1916) ("a suit  
13 arises under the law that creates the action"); (2) a state cause of action that turns on a  
14 substantial dispositive issue of federal law, Franchise Tax Bd. v. Construction Laborers  
15 Vacation Trust, 463 U.S. 1, 9 (1983); Smith v. Kansas City Title & Trust Co., 255 U.S.  
16 180, 199 (1921); or (3) a state cause of action that Congress has transformed into an  
17 inherently federal cause of action by completely preempting the field of its subject matter,  
18 Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557, 560 (1968).

19 A federal court must satisfy itself of its jurisdiction over the subject matter before  
20 proceeding to the merits of the case. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 577,  
21 583 (1999). In the case of a removed action, a district court must remand the case to state  
22 court "if at any time before the final judgment it appears that the district court lacks subject  
23 matter jurisdiction." 28 U.S.C. § 1447(c); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.  
24 1992). "The presumption against removal means that the defendant always has the burden  
25 of establishing that removal is proper." Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d  
26 1241, 1244 (9th Cir. 2009). "[R]emoval statutes are strictly construed against removal."  
27 Luther v. Countrywide Home Loans Servicing, LP, 533 F.3d 1031, 1034 (9th Cir. 2008).  
28

1 As such, any doubts regarding the propriety of removal favor remanding the case. See  
2 Gaus, 980 F.2d at 566.

3 Here, the notice of removal alleges that Plaintiff has violated the Fair Debt  
4 Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA") and the Fourth Amendment  
5 of the United States Constitution. See Notice of Removal ¶¶ 3, 8-11. The notice of  
6 removal also alleges that a separate, yet related, "FEDERAL TITLE 42 CASE MAY BE  
7 PREPARED AND WILL BE FILED AGAINST ALL CO-CONSPIRATORS, AND  
8 THESE PLAINTIFFS AS SOON AS FEASIBLE." Id. ¶ 4. The notice of removal states  
9 that "Defendants's [sic] cross-complaint and evolving title 42 CIVIL ACTION for FDCPA  
10 is an action to enforce Plaintiffs's [sic] liability created by violations of Defendants's [sic]  
11 rights under FDCPA." Id. ¶ 11.

12 Federal subject matter jurisdiction must be apparent from the face of the complaint,  
13 and cannot lie in anticipated defenses. Specifically, federal courts have jurisdiction over  
14 cases in which a "well-pleaded complaint" establishes that federal law creates the cause of  
15 action. Franchise Tax Board, 463 U.S. at 27-28. Defensive matters are not considered to  
16 confer federal question jurisdiction for removal purposes. Id. at 10 ("[A] defendant may  
17 not remove a case to federal court unless the *plaintiff's complaint* establishes that the case  
18 'arises under' federal law.") (emphasis in original). In reviewing the underlying complaints,  
19 it is readily apparent that this case does not satisfy the jurisdictional requirements for  
20 federal subject matter jurisdiction. The complaints filed by Plaintiff do not assert a federal  
21 claim. Thus, it is facially apparent that this case does not meet the requirements of 28  
22 U.S.C. § 1331 for federal subject matter jurisdiction.

### 23 **B. Diversity Jurisdiction**

24 The notice of removal alleges, without elaboration, that "DIVERSITY OF  
25 CITIZENSHIP EXISTS BETWEEN THE PARTIES." Notice of Removal ¶ 4. Given  
26 Defendants' pro se status, the Court will construe the notice of removal as alleging that  
27 removal is appropriate based on diversity jurisdiction. Having reviewed the notice of  
28 removal, the Court finds that Defendants have failed to sustain their burden to demonstrate

1 that diversity jurisdiction is proper. Gaus, 980 F.2d at 566. The underlying complaints  
2 both seek to recover \$642.55 in unpaid rent. See Notice of Removal, Exhs. 1-A & 1-B.  
3 This amount is far below the \$75,000 minimum required to establish diversity jurisdiction  
4 over a civil action. 28 U.S.C. § 1332(a).<sup>2</sup>

5 **C. Attorney Fees and Costs**

6 Plaintiff moves for an order requiring Defendants to pay for the costs and expenses,  
7 including attorney fees, it incurred as a result of the improper removal. Pl.'s Mtn. at 9-10,  
8 Dkt. 7. Specifically, Plaintiff requests an order awarding it costs and expenses in the  
9 amount of \$6,000. Id. at 10. Where a case is improperly removed, the Court "may require  
10 payment of just costs and any actual expenses, including attorney fees, incurred as a result  
11 of the removal." 28 U.S.C. § 1447(c). The Court has "wide discretion" to award attorney  
12 fees and costs under § 1447(c). Moore v. Permanente Medical Group, Inc., 981 F.2d 443,  
13 447 (9th Cir. 1992). However, "[a]bsent unusual circumstances, courts may award  
14 attorney's fees under § 1447(c) only where the removing party lacked an objectively  
15 reasonable basis for seeking removal." Martin v. Franklin Capital Corp., 546 U.S. 132, 141  
16 (2005).

17 Here, it is clear that this action was improperly removed because it does not involve  
18 a federal question and the amount sought in the underlying complaints is far below the  
19 \$75,000 minimum required to establish diversity jurisdiction. However, in view of  
20 Defendants' pro se status, the Court declines to award Plaintiff the costs and expenses it  
21 incurred as a result of the improper removal. Defendants may have genuinely believed that  
22 asserting federal statutes in defense of the small claims court actions presented a basis for  
23 removal. As such, the Court does not find that the attempted removal was objectively  
24 unreasonable under the circumstances such that an award of costs and expenses is  
25 appropriate.

26  
27 <sup>2</sup> In light of the Court's conclusion that Defendants have failed to sustain their  
28 burden to demonstrate that federal question or diversity jurisdiction exists, the Court will  
not reach the alternative grounds for remand articulated by Plaintiff.

1 **II. CONCLUSION**

2 For the reasons stated above, IT IS HEREBY ORDERED THAT:

- 3 1. Plaintiff's motion to remand is GRANTED.
- 4 2. The hearing currently scheduled for January 22, 2013 is VACATED.
- 5 3. The instant action is REMANDED to the Superior Court of California,
- 6 County of San Mateo.
- 7 4. The Clerk shall close the file and terminate all pending matters.

8 IT IS SO ORDERED.

9 Dated: 1/15/13

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11 SAUNDRA BROWN ARMSTRONG  
12 United States District Judge  
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11 Case Number: CV12-05263 SBA

12 **CERTIFICATE OF SERVICE**  
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14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
15 Court, Northern District of California.

16 That on January 15, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
17 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
18 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
19 located in the Clerk's office.

20  
21 Dorothy Sobayo  
22 2148 University Avenue  
23 East Palo Alto, CA 94303

24 Dated: January 15, 2013

Richard W. Wieking, Clerk

25 By: Lisa Clark, Deputy Clerk  
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